

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, having been charged with conspiracy to commit an offense (Article 81, UCMJ) and failure to obey an order (Article 92, UCMJ), the government never forwarded the charges and instead, the applicant was separated after agreeing to a separation in lieu of trial by court-martial (Chapter 10, AR 635-200). The applicant deserves an upgrade because: (1) The applicant's Post Traumatic Stress Disorder (PTSD), including a diagnosis of Traumatic Brain Injury (TBI) were the result of the military service. The symptoms were reported after the deployment to Iraq. Both diagnoses have detrimentally affected the life; (2) the paranoia caused by the PTSD was directly related to associating with the group of rouge MPs whose conduct ultimately led to criminal charges against the applicant; (3) The Chapter 10, although seemingly the best option at the time, left no opportunity for the applicant to defend oneself against the charges or for a full investigation into the specific involvement in the misconduct; and (4) because of the Other Than Honorable Characterization of Service, the VA made a determination the applicant's service was dishonorable; therefore, not eligible for regular VA benefits. The applicant is unable to work because of the medical condition and relies heavily on the care of the spouse. The diagnoses have taken a huge toll on the family both emotionally and financially, and managing the hardship is something the applicant would have to endure for the rest of the life. Months prior to the deployment, the applicant was seen on several occasions at the behavioral health facility on Fort Bliss for depression with anxiety and suicidal ideations. In January 2009, the clinician concluded the applicant was impulsive, depressed, and non-deployable because of instability. Despite the findings, the applicant was deployed to Iraq for 12 months (February 2009 to February 2010). While in Iraq, the applicant was exposed to indirect hits by explosive blasts and a head injury occurred inside a military vehicle while the applicant was not wearing headgear. Although not being diagnosed with TBI, the applicant reported experiencing headaches, memory loss, difficulty concentrating and problems sleeping from the incident in March 2010. In Spring 2010, a group of 10 Soldiers with family members were recruited to form a militia whose purpose was to "protect and defend the Constitution," and the applicant was identified as a participating member. The only evidence against the applicant was the CID interview in October 2010, at the time the applicant was involved in a car accident resulting in loss of consciousness and temporary paralysis, and just two months prior, in August 2010, the applicant had attempted suicide. Months later, the applicant was charged, and the Medical Evaluation Board process had been started, because the applicant's health and ability to perform the job were deteriorating. There was never an evaluation for competency to stand trial, nor to determine the mental responsibility because of the ultimate separation under Chapter 10. Since December 2012, the applicant has received counseling for the PTSD and in the last two years, the applicant began to respond to PTSD-related episodes with non-epileptic seizures, which occurred regularly when the applicant became anxious, excited, or angry. The applicant avoids

large crowds, including small-group settings with unfamiliar faces, and has never stopped having nightmares about the deployment and experienced severe memory loss because of the TBI. The applicant voluntarily admitted oneself to the Vermillion Behavioral Health for an inpatient PTSD treatment program in Lafayette, LA. The medical information is relevant to show the applicant's PTSD is very real and well-documented. Counsel further details the contentions in the online application.

b. Board Type and Decision: In a records review conducted on 28 September 2023, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 28 December 2011

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 19 May 2011, the applicant was charged with:

Charge I: Violation of the UCMJ, Article 81, for conspiring with four other Soldiers to commit an offense (between 1 May 2009 and 12 October 2010).

Charge II: Violation of the UCMJ, Article 92, for failing to obey a lawful general regulation, by wrongfully participating in an extremist organization (between 1 May 2009 and 12 October 2010).

Charge III: Violation of the UCMJ, Article 116, for participating in a breach of peace by wrongfully drilling as a member of an extremist organization (between 1 May 2009 and 12 October 2010).

Charge IV: Violation of the UCMJ, Article 134, for knowingly becoming a member affiliated with a group which encouraged the overthrow or destruction of the US Government by force or violence, in violation of 18 USC § 2385 (between 1 May 2009 and 12 October 2010).

(2) Legal Consultation Date: 29 November 2011

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 1 December 2011 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 5 September 2007 / 5 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 31B10, Military Police / 4 years, 3 months, 23 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (21 February 2009 – 12 February 2010)

f. Awards and Decorations: ARCOM, MUC, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

Special Court-Martial Order Number 39, 20 December 2011, reflects the charges described at paragraph 3c, referred to trial by a Special Court-Martial empowered to Adjudge a Bad Conduct discharge, were dismissed after an arraignment on 20 September 2011, and the request for discharge pursuant to Chapter 10, AR 635-100 was approved on 1 December 2011, with issuance of a discharge under Other Than Honorable conditions.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: William Beaumont Army Medical Center (WBAMC) medical records, 7 January 2009, reflects the applicant being seen for “therapy nondeployable 1 December, needs further evaluation.”

WBAMC medical records, 17 March 2010, reflects the applicant being seen for TBI Initial Screening and for “Brain Injury Traumatic.”

WBAMC medical records, 10, 11, and 18 October 2011, reflects the applicant being seen and treated for depression, and indicated a medical history of mTBI, post-concussion, PTSD, insomnia, anxiety, depression, and high blood pressure, and the AXIS diagnosis: Posttraumatic Stress Disorder.

Pawnee Mental Health Services Medication Evaluation, 18 October 2012, reflects the applicant was seeking treatment for a severe PTSD, diagnosed while in the military. On 10 October 2012, the Psychiatric Diagnosis assessment reflects, AXIS I, 309.81, Posttraumatic Stress Disorder.

Mental Health Technician (MHT) Progress Notes, 9 and 10 November 2014, reflects the applicant as a patient was admitted into a treatment program because of increased PTSD symptoms.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Online application; DD Form 214; WBAMC Medical Records; Pawnee Mental Health Services Medication Evaluation; and electronic medical records (Progress Notes).

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10, United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-40, paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(5) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

f. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

g. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed

bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the PTSD and TBI diagnoses have been the result of the military service. The applicant's AMHRR contains no documentation of PTSD and TBI diagnoses. The applicant provided several medical documents indicating treatment for behavioral health issues prior to the 2009 deployment and subsequent diagnoses and treatment for PTSD and mTBI.

The applicant contends because of paranoia caused by PTSD, associating with a group of rogue MPs have led to criminal charges against the applicant and the only evidence was as interview by the CID at the time the applicant was involved in a car accident resulting loss of consciousness and temporary paralysis and an attempted suicide two months prior. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the VA determined the applicant's service was dishonorable and was not eligible for VA benefits. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than used by the Army when determining a member's discharge. Eligibility for veterans' benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends a Medical Evaluation Board had been initiated because the health and ability to perform the job were deteriorating. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped, and the board report is filed in the member's medical record.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD

and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Post-Traumatic Stress Disorder, Traumatic Brain Injury, Adjustment Disorder, and Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, Depression, Post-Traumatic Stress Disorder, and Traumatic Brain Injury. The VA has also service connected applicant's Post-Traumatic Stress Disorder and Traumatic Brain Injury.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is no natural sequela between any of applicant's behavioral health conditions (Adjustment Disorder, Depression, Post-Traumatic Stress Disorder, or Traumatic Brain Injury) and being part of an extremist organization or conspiring with other soldiers to commit an offense since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's Adjustment Disorder, Depression, PTSD, and TBI did not outweigh the basis of separation - conspiring to commit an offense, wrongfully participating in an extremist organization, wrongfully drilling as a member of an extremist organization, and becoming a member affiliated with a group seeking to overthrow the government by force.

b. Response to Contention(s):

(1) The applicant contends the PTSD and TBI diagnoses have been the result of the military service. The Board considered this contention and determined that this contention was valid as the applicant was diagnosed with PTSD and TBI during military service. However, the applicant's PTSD and TBI do not excuse or outweigh the applicant's being part of an extremist organization and conspiring with other soldiers to commit an offense basis for separation.

(2) The applicant contends because of paranoia caused by PTSD, associating with a group of rogue MPs have led to criminal charges against the applicant and the only evidence was as interview by the CID at the time the applicant was involved in a car accident resulting loss of consciousness and temporary paralysis and an attempted suicide two months prior. The Board considered this contention and determined that the applicant's PTSD does not excuse or outweigh the applicant's being part of an extremist organization and conspiring with other soldiers to commit an offense basis for separation. There is no nexus between applicant's PTSD and applicant's being part of an extremist organization or conspiring with other soldiers to commit an offense basis for separation, thus, applicant's PTSD diagnosis does not interfere with the applicant's ability to distinguish between right and wrong and act in accordance with the right. The applicant was properly and equitably discharged.

(3) The applicant contends the VA determined the applicant's service was dishonorable and was not eligible for VA benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(4) The applicant contends a Medical Evaluation Board (MEB) had been initiated because the health and ability to perform the job were deteriorating. The Board considered this

contention and determined there is insufficient evidence in the applicant's file to support there had been a MEB initiated for the applicant. There is evidence of a fitness for duty evaluation in January of 2009 to determine applicant's ability to deploy.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's PTSD, TBI, Adjustment Disorder, Depression did not excuse or mitigate the offenses of being part of an extremist organization and conspiring with other soldiers to commit an offense. The Board also considered the applicant's contention regarding paranoia caused by PTSD, associating with a group of rogue MPs have led to criminal charges against the applicant and found that totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs